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September 20, 2012

VIA ELECTRONIC AND CERTIFIED MAIL

Anthony Herman
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 6611—Response of Friends of Laura Ruderman (Abbot Taylor, Treasurer)

Dear Mr. Herman:

This letter responds to a recent complaint filed with the Commission, which asserts that Friends of Laura Ruderman accepted an excessive in-kind contribution when Progress for Washington, an independent expenditure-only PAC, sponsored certain public communications criticizing Ms. Ruderman's primary-election opponent.¹

The principal argument advanced in the complaint is to assume that these communications were "coordinated" *per se* because Ms. Ruderman's mother, Margaret Rothschild, gave funds to Progress for Washington. As you know, however, the Commission's detailed "coordinated communication" test requires far more than this coordination-by-heredity claim, and the complaint manages only to assemble empty evidence like third-hand anonymous statements. Under the clear standards established by the Commission's "coordinated communication" test, there is no reason to believe a violation occurred because Ms. Rothschild was not Friends of Laura Ruderman's "agent" for any relevant purpose and because none of the Commission's "conduct" standards were met.

I. ARGUMENT

A. Ms. Rothschild Was Not Friends of Laura Ruderman's "Agent"

In the absence of facts or even a colorable claim that the Progress for Washington ads were coordinated as a matter of law, the complaint would have the Commission stretch the term "agent" beyond its regulatory definition² in an attempt to paper over the lack of factual allegations in the complaint with overly broad and erroneous interpretations of the law.

¹ Complaint at 1. Per our prior communication with your office, the due date for this response was extended until September 20, 2012.

² 11 C.F.R. § 109.21(d).

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Specifically, the complaint implies Ms. Rothschild was a campaign "agent" due simply to her mother-daughter relationship with Ms. Ruderman, insisting in conclusory fashion that "[n]o relationship is closer than that between a mother and her daughter."³ But the Commission has already rejected such attempts to categorize certain individuals as agents *per se*, opting instead to find that an individual "would only qualify as an agent when he or she ... [r]eceives actual authorization ... from a specific principal to engage in the specific activities listed in 109.3 [and] engages in those activities on behalf of that specific principal."⁴ To be a campaign "agent," then, Ms. Rothschild would have had to possess actual authority to do one or more of the following on behalf of Friends of Laura Ruderman:

- Request or suggest that Friends of Laura Ruderman create, produce, or distribute a communication;
- Request or suggest that any other person create, produce, or distribute a communication;
- Provide material or information to assist another person in the creation, production, or distribution of any communication;
- Be materially involved in decisions regarding a communication's content, intended audience, means, mode, specific media outlet used, timing, frequency, size, prominence, or duration; or
- Make or direct a communication that is created, produced, or distributed with the use of material or information derived from a substantial discussion about the communication.⁵

The complaint does not even contend that Ms. Rothschild had any such authority, and in fact Friends of Laura Ruderman did not give Ms. Rothschild actual authority to perform any of these tasks. Ms. Rothschild held no formal role or title in Friends of Laura Ruderman.⁶ She did not offer campaign-related input to Friends of Laura Ruderman's principals, participate in campaign strategy discussions, or help make campaign-related decisions.⁷ Ms. Rothschild did not represent Friends of Laura Ruderman in any meetings or communications with outside parties, and the only public appearance at which she represented the campaign was a single small-town parade.⁸

In the absence of even a claim⁹ that Ms. Rothschild was given such meaningful authority, the complaint instead grossly overstates the legal importance of Ms. Rothschild's appearance in a Friends of Laura Ruderman advertisement, claiming that it alone, without more, automatically

³ Complaint at 8.

⁴ 68 Fed. Reg. 421, 424-425 (Jan. 3, 2003).

⁵ 11 C.F.R. § 109.3.

⁶ Berry Aff. at ¶3; Ruderman Aff. at ¶3; Taylor Aff. at ¶3.

⁷ Berry Aff. at ¶4; Ruderman Aff. at ¶4; Taylor Aff. at ¶4.

⁸ Berry Aff. at ¶6; Ruderman Aff. at ¶5.

⁹ To be clear, as the attached affidavits illustrate, it is not only that the complainant did not articulate facts or claims that these ads were coordinated, but rather the facts affirmatively show that Ms. Rothschild was not an agent of the Ruderman campaign nor were any of the conduct tests in Part 109 satisfied.

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makes her a campaign "agent."¹⁰ This claim is absurd, and if taken seriously would mean that any actor or extra, certainly any family member, who appears in a candidate or party committee ad therefore becomes an agent of that candidate or party committee for Part 109 purposes.

The ad, which discusses Laura Ruderman's personal family connection to health care reform, features Ms. Rothschild in a background, non-speaking role for only a few seconds.¹¹ Ms. Rothschild was not authorized to, and in fact did not, draft this advertisement, edit this advertisement, or make any decisions regarding this advertisement's creation or distribution.¹² Consequently, Ms. Rothschild was not a campaign "agent" under the Commission's established definition and being filmed for a Friends of Laura Ruderman advertisement she had no role in creating or distributing does not change that analysis.

B. The Commission's "Conduct" Standards Were Not Met

The complaint not only falls short of establishing that Ms. Rothschild was a campaign "agent," it also fails to demonstrate that any "conduct" standard in the "coordinated communication" test was met. An outside group's communication is not "coordinated" unless one or more¹³ of the following "conduct" standards is satisfied:

- A campaign requested, suggested, or assented to the communication's creation, production, or distribution;¹⁴
- A campaign was materially involved in decisions about the communication's content, intended audience, specific media outlet, timing, frequency, size, prominence, or duration;¹⁵
- A campaign held substantial discussions¹⁶ about the communication with the outside group;¹⁷ or
- The communication was created, produced or distributed by a "common vendor"¹⁸ or a former campaign employee/contractor¹⁹ who used or conveyed information about campaign plans, projects, activities, or needs that was material to the communication.

¹⁰ Complaint at 3.

¹¹ See Friends of Laura Ruderman TV Ad, *Family* (July 16, 2012), available at <http://www.lauraruderman.org/2012/07/16/sneak-peak-watch-our-new-tv-ad/>.

¹² Berry Aff. at ¶7; Ruderman Aff. at ¶6.

¹³ 11 C.F.R. § 109.21(a)(3).

¹⁴ 11 C.F.R. § 109.21(d)(1)(i)-(ii).

¹⁵ 11 C.F.R. § 109.21(d)(2).

¹⁶ A discussion is "substantial" in this respect if information that is "material to the communication" about campaign plans, projects, activities or needs is conveyed to the outside advertisement's payor. 11 C.F.R. § 109.21(d)(3).

¹⁷ 11 C.F.R. § 109.21(d)(3).

¹⁸ 11 C.F.R. § 109.21(d)(4).

¹⁹ 11 C.F.R. § 109.21(d)(5).

Notably, the complaint fails even to aver any facts that would actually meet these specific "conduct" standards. Instead, the complaint settles for circumstantial allegations that do not withstand closer examination. For example, the complaint declares that coordination caused "carefully timed" advertising in mid-July by Progress for Washington and Friends of Laura Ruderman,²⁰ without acknowledging the proximity of both ads to the August 7th Washington Primary Election. Progress for Washington and Friends of Laura Ruderman, like any political actors, hardly needed to coordinate with each other for each to determine that its efforts to influence this election should reach a crescendo shortly before the election. Indeed, a major part of the Commission's regulatory regime is based on an assumption that political actors of all types that sponsor electioneering ads tend to do so shortly before an election.²¹ Labeling primary election ads "carefully timed" because they happen to take place shortly before that primary election, then, cannot be the basis of any "coordinated communication" finding.

The complaint further confuses correlation and causality when it subsequently argues that coordination must have caused Progress for Washington's ads to be of a negative tone and Friends of Laura Ruderman's ads to be more positive. This supposed "informal division of labor," as the complaint terms it, again without even alleging that any such division actually occurred in practice, was not the result of any interaction between Progress for Washington and Friends of Laura Ruderman. Independent expenditure-only PACs have been found generally to run more negative ads than candidate committees.²² And the complaint offers no proof that coordinating parties more often choose to adopt contrasting tones rather than comparable tones. It is therefore not apparent how tone could factor at all in a "coordinated communication" finding.

The complaint's reliance on a report by *The Stranger* is similarly questionable. A principal piece of evidence in the complaint is a quote from a blogger, citing "a couple sources that Ruderman had been hinting to people that something big was coming."²³ Put differently, the complaint's coordination claim rests partly on a blogger's anonymous sources who provided a third-hand account of Ms. Ruderman telling "people" that "something big was coming." The Commission has not previously based its findings on unsubstantiated rumor. It should not do so here either.

Finally, the complaint spends considerable time discussing Ms. Rothschild's appearance in a campaign ad, assuming – still without offering proof – that even just the appearance alone

²⁰ Complaint at 3.

the complaint spends considerable time discussing Ms. Rothschild's appearance in a campaign ad, sure that the appearance must have made her privy to inside knowledge about the campaign's plans, strategies, and needs. This, in fact, was not the case.²¹ Ms. Rothschild's part in the ad—a non-speaking, background role—did not require any special access to campaign information. ²¹ See 11 C.F.R. § 100.29.

²² See, e.g., Wesleyan Media Project, *Presidential Ads 70 Percent Negative in 2012* (May 2, 2012), available at <http://mediaproject.wesleyan.edu/2012/05/02/jump-in-negativity/>.

²³ Complaint at 4. The blog post in question went on to read "No idea if this [the Progress for Washington mailer] is what she was allegedly talking about." The complaint omits this crucial sentence. The Stranger's SLOG Blog, *First CD Race Turns Negative* (July 6, 2012), available at <http://slog.thestranger.com/slog/archives/2012/07/06/first-cd-race-turns-negative> (last accessed 9/13/12).

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must have made her privy to inside knowledge about the campaign's plans, strategies, and needs.²⁴ This was not the case.²⁵ Ms. Rothschild's non-speaking, background role in the ad did not require any access to nonpublic campaign information, and in fact no such information was provided to her.

At bottom, the complaint is unable to produce evidence of coordination because the interactions between Friends of Laura Ruderman and Ms. Rothschild met none of the "conduct" standards in the Commission's "coordinated communication" test. The campaign's principals did not request or suggest that Ms. Rothschild sponsor Progress for Washington's ads.²⁶ They did not assent to Progress for Washington's activities, and, in fact, promptly asked the group to cease and desist in a public letter.²⁷ The campaign's principals were not even aware of Progress for Washington before the group's advertisements became public, meaning that there was no "material involvement" or "substantial discussions."²⁸ Nothing suggests that any "common vendor" or former employee/contractor of Friends of Laura Ruderman helped produce Progress for Washington's communications.²⁹ And being someone's parent does not necessarily make you privy to their plans, projects, or needs as an adult, much less as a candidate for federal office.

Consequently, because the "conduct" standards in the Commission's "coordinated communication" test were not met, Friends of Laura Ruderman did not accept an excessive in-kind contribution.

²⁴ Complaint at 3.

²⁵ Berry Aff. at ¶7; Ruderman Aff. at ¶6.

²⁶ Berry Aff. at ¶¶9-10; Ruderman Aff. at ¶¶8-9; Taylor Aff. at ¶¶6-7.

²⁷ Letter from Friends of Laura Ruderman to Progress for Washington (July 18, 2012), available at http://images.politico.com/global/2012/07/letter_to_progress_for_washington.jpg.

²⁸ Berry Aff. at ¶¶8, 11-12; Ruderman Aff. at ¶¶7, 10-11; Taylor Aff. at ¶¶5, 8-9.

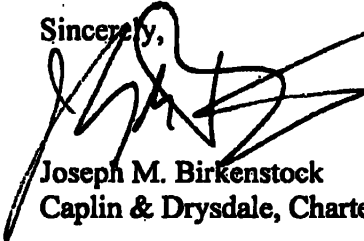
²⁹ Please note that one article cited by the complaint declares that there are "close consultant" links between Friends of Laura Ruderman and Progress for Washington, as a result of the outside group's use of Jeff Gumbinner. See Complaint at 4, n.4. Mr. Gumbinner was not retained by Friends of Laura Ruderman at any time. He previously offered services to Ms. Ruderman's past campaigns for state-level office. See Josh Feit, *Anti-DelBene Mailer Done by Firm with Ties to Ruderman*, Publicola Blog (July 11, 2012), available at <http://publicola.com/2012/07/11/anti-delbene-mailer-done-by-firm-with-ties-to-ruderman/>.

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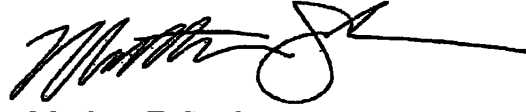
II. CONCLUSION

For all the foregoing reasons, the Commission should find no reason to believe that a violation occurred and should dismiss this Matter and close the file.

Sincerely,



Joseph M. Birkenstock
Caplin & Drysdale, Chartered



Matthew T. Sanderson
Caplin & Drysdale, Chartered

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